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May 23, 2001

REPORT TO THE HONORABLE  
MAYOR AND CITY COUNCIL

*ASHOK ISRANI V. THE SUPERIOR COURT OF SAN DIEGO COUNTY  
CITY OF SAN DIEGO, et al., Real Parties in Interest*

**INTRODUCTION**

On April 23, 2001, the Fourth District Court of Appeal issued its opinion in the above entitled eminent domain case, involving a challenge by Ashok Israni to the timing of the City's need for immediate possession of his property which is located near the former Naval Training Center [NTC]. The Court of Appeal affirmed the trial court's decision, finding that Mr. Israni did not sustain "substantial hardship" within the meaning of the statute, and that the City had demonstrated an "urgent need" for possession, thereby denying the petition for writ of mandate. Unless challenged in the California Supreme Court, the decision will become final on June 4, 2001.

**FACTS**

Petitioner Israni owns real property near NTC in the City of San Diego. On July 6, 1990, Israni entered into a lease agreement with the Vietnam Veterans of San Diego [VVSD], a non-profit corporation, pursuant to which VVSD leased the property for an initial term of five years for the operation of a homeless veterans' shelter and residential facility. On July 21, 1991, the lease agreement was amended by the parties to provide for a ten year term, expiring on September 14, 2000. VVSD had an option to extend the lease term an additional ten years, by giving Israni at least 120 days prior written notice before the expiration of the ten year term. The lease contained a condemnation provision that recognized the value of VVSD's substantial tenant improvements and equitably pro-rated any condemnation award between landlord and tenant. In order to reimburse VVSD for any improvements made after July 6, 1990, however, the condemning authority would first have to take title or possession before the expiration of the lease.

After July 6, 1990, VVSD spent approximately \$900,000 in tenant improvements to the

property. VVSD's headquarters, counseling and residential facilities are located on the property. City issued a conditional use permit to VVSD for its operations on the property.

On February 14, 2000, Israni received a letter from the City offering to purchase the property for \$1,730,000, including \$635,000 for the value of tenant improvements made after VVSD occupation of the property. Israni did not accept this offer.

VVSD did not exercise its option to extend the lease. This was based upon VVSD's position that since 1995 the City had told VVSD that it would be allowed to remain in possession throughout the anticipated condemnation process.

On August 8, the City Council adopted a resolution of necessity, for condemnation of the property, to assure the continuation of a transitional housing facility consistent with the Homeless Assistance Element of the San Diego Naval Training Center Reuse Plan, and to meet the City's low and moderate income housing needs identified in the Housing Element of the General Plan.

On August 9, 2000, City filed a complaint in eminent domain to acquire the property for public purposes. On August 22, 2000, the Superior Court granted the City's ex parte application for an order of immediate possession of the property on the later of August 31, 2000, or three days after notice of the order is served on the owner and occupants of the property. The City asserted an urgent need for possession of the property since possession would not displace any person in actual or lawful possession, and because VVSD consented to the application.

On August 23, 2000, the City served Israni with copies of the complaint and the Superior Court's order of immediate possession. Israni then filed an application for an order vacating the order of possession or in the alternative, an order staying the effective date of the order. Israni argued that he was denied due process; that a stay was appropriate on the grounds he would sustain "substantial hardship" (the loss of tenant improvements valued at \$635,000) if the stay was not granted; immediate possession was not necessary; and the City would not suffer "substantial hardship" were the transfer of possession delayed until September 15, one day after the expiration of the lease. On August 28, the City filed its opposition to the relief sought. The trial court stayed the order of possession until it received additional briefing and heard arguments on September 8, 2000.

On September 8, 2000, the trial court denied Israni's application to vacate or stay the City's order of immediate possession. The trial court found that Israni had not demonstrated substantial hardship within the meaning of the statute, and that he was not an owner in possession of the property. The court determined that the spirit of the lease provided for an equitable distribution between the landlord and tenant, and that Israni's claimed loss of \$635,000

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was not viewed as a hardship, but rather as the loss of a windfall in the form of compensation he acknowledged should go to VVSD in the event of condemnation. The court also found, based upon the evidence, that Israni had not demonstrated a reasonable probability of success to a challenge of the "right to take" so as to stay the order of immediate possession.

Israni filed a Writ of Mandate with a request for an immediate stay. The Fourth District Court of Appeal denied the requested stay, but issued an order to show cause why the requested relief should not be granted.

### **THE COURT OF APPEAL'S DECISION**

On April 23, 2001, the Court of Appeal issued its opinion affirming the trial court's ruling. The Appellate Court rejected Israni's claim that he was denied due process; that he had sustained substantial hardship within the meaning of the statute; or had demonstrated a reasonable probability of prevailing on his challenge to the City's "right to take" the property.

This is a lengthy published opinion of first impression. Israni has not indicated whether he will seek review before the California Supreme Court. If an appeal is pursued with the California Supreme Court, it must be filed no later than June 4, 2001. If no appeal is filed, the litigation will continue in the trial court. A November 2, 2001, trial date has been set.

Deputy City Attorney Paul G. Edmonson opposed Petitioner's Writ of Mandate before the Fourth District Court of Appeal on behalf of the City. A copy of the Court of Appeal's decision is attached.

Respectfully submitted,

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CASEY GWINN  
City Attorney

CG:PGE:rd  
Attachment  
RC-2001-18